

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

3	ALABAMA COALITION FOR	CASE NO. 2:24-CV-01254-AMM
4	IMMIGRANT JUSTICE; LEAGUE OF	
5	WOMEN VOTERS OF ALABAMA	
6	EDUCATION FUND; ALABAMA	
7	STATE CONFERENCE OF THE	
8	NAACP; ROALD HAZELHOFF;	
9	JAMES STROOP; CARMEL	
10	MICHELLE COE; and	
11	EMILY JORTNER,	
12	Plaintiffs,	

v.

WES ALLEN, in his official
Capacity as Alabama
Secretary of State; STEVE
MARHSALL, in his capacity as
Alabama Attorney General;
and JAN BENNETT, BARRY
STEPHENSON, CINDY WILLIS
THRASH, and SHEILA COX
BARBUCK, in their official
capacities as Chairs of
Boards of Registrars of
Elmore, Jefferson, Lee,
and Marhsall Counties,

Defendants.

UNITED STATES OF AMERICA,
Plaintiff,

CASE NO: 2:24-cv-01329-AMM

v.

STATE OF ALABAMA and WES
ALLEN, in his official
capacity as Alabama
Secretary of State,
Defendants.

**** MOTION HEARING ****

BEFORE THE HONORABLE ANNA MANASCO, UNITED STATES
DISTRICT JUDGE, at Birmingham, Alabama, on Wednesday, October
16, 2024, commencing at 10:10 a.m.

APPEARANCES

FOR THE PLAINTIFF, ALABAMA COALITION FOR IMMIGRANT JUSTICE, et al.

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FOR THE PLAINTIFF, UNITED STATES OF AMERICA:

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FOR THE DEFENDANTS:

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Proceedings reported by stenographic court reporter, transcript produced using computer-aided transcription.

Transcript prepared by:

Kelli M. Griffin, RPR, CSR
Official Court Reporter

1 (Proceedings commenced at 10:10 a.m. in open court.)

2 THE COURT: All right. Good morning, everybody.

3 MR. FREEMAN: Good morning, Your Honor.

4 MR. DELHEIM: Good morning.

5 THE COURT: All right. While I get set up, let's take
6 appearances.

7 Who do I have for the United States?

8 MR. FREEMAN: Dan Freeman on behalf of the United
9 States.

10 MR. DELHEIM: Richard Delheim for the United States.

11 MS. SLATER: Kelli Slater for the United States.

12 THE COURT: All right. Good morning to all of you.

13 All right. Who do I have for the private plaintiffs?

14 MS. HUDDLESTON: Kathryn Huddleston from Campaign
15 Legal Center, Your Honor. And with me are my colleagues,
16 Danielle Lang, Kate Hamilton, and Shilpa Jindia.

17 MR. MCGUIRE: Good morning, Your Honor. Joseph
18 McGuire for the private plaintiffs.

19 THE COURT: All right.

20 MS. COHEN: Good morning, Your Honor. Michelle Kanter
21 Cohen from Fair Elections Center for the private plaintiffs.

22 THE COURT: Okay. Is that everybody? All right.
23 Good morning to all of you.

24 All right. Who do I have for the State defendants?

25 MR. OVERING: Robert Overing for State defendants.

1 MS. MESSICK: Misty Messick for the State defendants.

2 MR. WOODARD: Scott Woodard for State defendants.

3 THE COURT: All right. Good morning to all of you.

4 Okay. I appreciate everyone's diligent work yesterday and
5 received all of the submissions and communications overnight,
6 and so I am prepared to proceed this morning unless anybody has
7 anything else we need to take up.

8 All right. Okay. These cases are before the Court on two
9 motions to dismiss by the State defendants, a motion for a
10 preliminary injunction by the United States, and a motion for
11 preliminary injunction by the private plaintiffs.

12 The cases are presently consolidated, and at the hearing
13 on some of the issues raised on the motions for a preliminary
14 injunction yesterday, the Court received evidence and heard
15 testimony from Mr. Clay Helms who serves as the Chief of Staff
16 to the Alabama Secretary of State. At the Court's direction,
17 the evidence and argument yesterday was to be limited to the
18 issue of the 90-day provision. During the hearing, all parties
19 agreed that testimony taken was admissible in both cases
20 currently pending before the Court.

21 At the conclusion of the hearing yesterday, I shared my
22 preliminary views of the evidence and argument and afforded the
23 parties a final opportunity to resolve the matter overnight.
24 The parties engaged in discussions but were not able to agree
25 on a resolution.

1 So in connection with the forthcoming written order, the
2 Court now makes the following findings of fact and conclusions
3 of law. The Court emphasizes that what follows is limited to
4 the issue of the 90-day provision. Federal law imposes a
5 deadline for programs like the one currently before the Court
6 and Secretary Allen's office blew the deadline for the 2024
7 general election with real consequences for thousands of
8 Alabamians who the Secretary now acknowledges are, in fact,
9 legally entitled to vote. Accordingly, the Court will find
10 that a preliminary injunction should issue and will not harm
11 the State's ability to investigate and prosecute noncitizens
12 who try to vote in Alabama.

13 At the present time, the Court will make no other findings
14 or conclusions about any of the other issues in the cases. As
15 to the preliminary injunction standard, the Court first finds
16 that the United States is substantially likely to succeed on
17 the merits of its claim that the Secretary of State violated
18 the 90-day provision of the National Voter Registration Act of
19 1993, 52 U.S.C. Section 20507(c)(2)(a). The Court's finding in
20 this regard rests entirely on undisputed facts, testimony by
21 Mr. Helms on behalf of Secretary Allen and the State of
22 Alabama, and concessions by counsel for the State defendants.

23 The 90-day provision states that a state shall complete,
24 not later than 90 days prior to the date of a primary or
25 general election for federal office, any program, the purpose

1 of which is to systematically remove the names of ineligible
2 voters from the official list of eligible voters.

3 The Court first turns to the issue whether the process
4 undertaken by Secretary Allen's office was a program for
5 purposes of the 90-day provision. Under controlling Eleventh
6 Circuit precedent, the statutory term, "any program" has a
7 broad meaning and encompasses programs of any kind. That's the
8 Arcia case at page 1344.

9 In its closing argument, counsel for the State defendant
10 stated his awareness of the discussion of the word "any" by the
11 Eleventh Circuit in Arcia and stated that we're not fighting so
12 much that this isn't a program. And consistent with that
13 acknowledgment, the Court finds that Secretary Allen's
14 announced process fits within the broad meaning based on a
15 plain reading of the statute and Arcia. Because the program
16 modified voter lists on a basis, other than registrant's
17 request for removal, criminal conviction, or mental incapacity,
18 or death, the program was subject to the 90-day provision under
19 52 U.S.C. Section 20507(c)(2)(b). In deed, if the Secretary's
20 process here is not a program within the meaning of the
21 National Voter Registration Act, it's difficult for the Court
22 to imagine what would qualify as a program.

23 The Court next turns to the question whether the program
24 was completed 90 days before an election for federal office.
25 Per Secretary Allen's August 13th, 2024 press release, which is

1 Doc. 49-1 in the CM/ECF record, the Court finds that the
2 program at issue here was initiated 84 days prior to the
3 general election to be held in 2024. The Court further finds
4 that the program remains ongoing to this day, as reflected by
5 multiple declarations from Mr. Helms detailing the actions his
6 office has taken in recent days and weeks in connection with
7 the program.

8 The State defendants conceded, at page 169 of the rough
9 transcript yesterday, that the program was not completed
10 outside the 90-day period. And in response to questions from
11 the Court, Mr. Helms testified that the program would affect
12 the upcoming 2024 general election. As to the issue whether
13 the purpose of the program was to remove the names of
14 ineligible voters from the official list of eligible voters,
15 the Court finds Secretary Allen's August 13th, 2024 press
16 release was titled "Secretary of State, Wes Allen, implements
17 process to remove noncitizens registered to vote in Alabama."
18 The Court finds that that press release stated that Secretary
19 Allen is instructing the Board of Registrars in all 67 counties
20 to immediately inactivate and initiate steps necessary to
21 remove individuals who are not United States citizens.
22 Mr. Helms testified yesterday that the Secretary stands behind
23 that press release to this day, and he testified yesterday that
24 the program has multiple purposes, one, for noncitizens to
25 remove themselves and, two, for citizens to update their voter

1 information. In his deposition, Mr. Helms testified that the
2 purpose was to remove noncitizens that were already on the
3 rolls illegally and were potentially voting. That's Exhibit 46
4 at page 74, line 18. Because the program targeted alleged
5 noncitizens for ultimate removal from the voter registration
6 list, and based on Mr. Helms's deposition testimony, the Court
7 finds that the purpose of the program was to remove ineligible
8 voters from the official list of eligible voters for purposes
9 of the 90-day provision.

10 The Court now addresses the question whether the purpose
11 of the program was to remove ineligible voters systematically.
12 Mr. Helms testified that the basic methodology for creating the
13 list of 3251 Alabamians was to take information on anyone who
14 provided noncitizenship data to the Alabama Law Enforcement
15 Agency or the Alabama Department of Labor and crosscheck it
16 with the voter file. This methodology was also described by
17 Secretary Allen's office in a letter to the Department of
18 Justice on September 19th, 2024, which is at Doc. 49-7 in the
19 record. Voter removal programs based on mass computerized
20 database matching, such as what is done here or what was done
21 here, are systematic programs under controlling Eleventh
22 Circuit precedent. That's at page 1344 of the Arcia case.

23 Additionally, Mr. Helms testified that he understood that
24 in any process using data, you're going to have the potential
25 for false positives for other issues. And this testimony

1 indicates that Mr. Helms understood that when the Secretary's
2 office generated lists that put voters on a path to removal as
3 part of the program, that process was systematic in nature.

4 The State argues that nevertheless, removals in the
5 program are not systematic because the process merely invites
6 individual voters to engage in a case-by-case dialogue with the
7 State about their eligibility to vote. The Court rejects this
8 interpretation because it, A, misses the reality that putting
9 voters on a path to removal is systematic in this program, B
10 runs afoul of Arcia's rule that programs use a mass
11 computerized data-matching process are definitionally
12 systematic, and, C, would allow mass computerized data-matching
13 programs to completely evade the 90-day provision, which is
14 inconsistent with the text and purpose of the statute.

15 Finally, the rote use of template letters by County Boards
16 of Registrars in all of Alabama's counties, templates that were
17 provided by the Secretary, illustrates the systematic nature of
18 the path to removal that the program created.

19 For the following reasons, the Court finds that the United
20 States is likely to establish that the Alabama Secretary of
21 State's program is covered by the 90-day provision and violated
22 it. The State defendants raised two primary arguments against
23 this finding, and the Court now turns to those. One is about
24 the timing of removals that may occur as part of the program,
25 and one is about marking voters as inactive on the rolls. The

1 Court will reject both arguments.

2 First, the State defendants argue that there's no
3 statutory violation here because no removals have occurred or
4 will occur before the 2024 election, other than self-removals,
5 and the 90-day provision bars only removals during that time
6 frame. Testimony from Mr. Helms does indicate that other than
7 self-removals no removals have occurred to date in connection
8 with the program, and the only removals, other than
9 self-removals, that will occur, will happen in connection with
10 the 2028 election. But this does not undo the reality that the
11 purpose of the program is to systematically remove ineligible
12 voters from the rolls, which is what brings it within the reach
13 of the statute. And as a practical matter, the Secretary's
14 communications to registrars and voters in August of 2024 were
15 in the context of the 2024 general election. The August press
16 release and August letters stated that voters were on a path to
17 removal from the rolls, and it directed them about resolving
18 that issue before the 2024 general election. It said nothing
19 about 2028. The State defendants make a number of statutory
20 interpretation arguments to the effect that the 90-day
21 provision does not bar the operation of programs within 90 days
22 of an election; it bars only systematic removals within that
23 timeframe. But based on answers to the Court's questions
24 yesterday, the State defendants take this argument too far, so
25 far as to allow the Secretary of State to commence a program

1 with the purpose of systematically removing ineligible voters
2 from the rolls merely 80 days before the election, tell voters
3 as a part of that program that they have been removed, and
4 escape liability for a statutory violation on a ground that, in
5 truth, that removal has not been accomplished. This
6 interpretation would read the words "purpose" and "complete"
7 out of the statute and give them no meaning. The Court thus
8 rejects the State defendants' statutory arguments on those
9 grounds as well as for the other statutory interpretation
10 reasons articulated by the United States on rebuttal at the
11 close of the hearing yesterday.

12 Second, the State defendants argue that there is no
13 violation of the 90-day provision because so far voters have
14 only been inactivated as a part of this program, unless they
15 have self-removed, and inactive voters may still cast a ballot.
16 But the testimony of Mr. Helms and the letters to voters
17 themselves made clear that inactivation is just a precursor
18 step on the path to removal, so the fact that to date the
19 Secretary's office has only inactivated voters as part of the
20 program does not change the fact that the purpose of the
21 program is to remove ineligible voters for the rolls.

22 The Court next turns to the issue of whether irreparable
23 harm will occur in the absence of preliminary injunctive
24 relief, and the Court has no difficulty finding that following
25 the Secretary's violation of the 90-day provision, both the

1 United States and voters in Alabama will suffer irreparable
2 harm in the absence of preliminary injunctive relief. First,
3 the harm to the United States is clear as a matter of law.
4 Under controlling precedent, the United States suffers an
5 injury when its valid laws in a domain of federal authority are
6 undermined by impermissible State action. That's United States
7 versus Alabama 691 f.3rd 1269 at 1301 decided by the Eleventh
8 Circuit in 2012. Second, the harm to Alabama voters is obvious
9 and has been obvious to the Secretary since he began this
10 program. Based on the Secretary's own evidence of harm to
11 voters offered in this case in the last four days, the Court
12 rejects unequivocally legal counsel's argument that there is no
13 harm to voters but only a slight inconvenience. In this
14 regard, the Court makes the following specific findings:

15 One, the Secretary's August 13th, 2024, press release made
16 clear that the Secretary understood that because of the way
17 that the lists were generated, the program would put some
18 citizens on a path to removal even though they are eligible to
19 vote. In that press release, Secretary Allen stated that some
20 of the individuals who were issued noncitizen identification
21 numbers, since receiving them, have become naturalized citizens
22 and are therefore eligible to vote.

23 Mr. Helms -- two, Mr. Helms testified yesterday that he
24 and Secretary Allen understood that this error and other
25 inclusion errors would occur as part of the program because,

1 quote, in any process using data, you are going to have the
2 potential for false positives or other issues, end quote.

3 Three, Mr. Helms also testified yesterday that he and
4 Secretary Allen had no idea how high the error rate would be
5 when the program began back in August.

6 Four, according to Mr. Helms's declarations and his
7 testimony yesterday, since the program began, the Secretary has
8 learned information that has caused his office to conclude that
9 more than 2,000 of the 3,251 voters originally on the list were
10 inaccurately inactivated, and those voters have been
11 reactivated. Accordingly, the error rate is admitted at well
12 more than 50 percent. Of the remaining approximately 1,000
13 voters, the record does not establish how many were
14 inaccurately inactivated.

15 Five, despite knowing that errors would occur, Secretary
16 Allen referred everyone on the list, all 3,251 people to
17 Attorney General Marshall via letter, hand-delivered, on August
18 13th, 2024, for criminal investigation.

19 Six, despite knowing now that he inaccurately referred
20 more than 2,000 Alabamians for criminal investigation,
21 Mr. Helms testified that Secretary Allen has taken no steps to
22 correct his inaccurate referral.

23 Seven, counsel from the Attorney General's office told the
24 Court yesterday that the Attorney General takes referrals of
25 criminal activity by other constitutional officers very

1 seriously, which comes as no surprise to the Court.

2 Eight, additionally, the plaintiffs developed evidence, a
3 podcast interview of Secretary Allen, that before this program
4 was implemented, Secretary Allen was aware of the 90-day
5 provision and knew that under federal law the State could not
6 engage in certain kinds of voter roll maintenance within the 90
7 days preceding a federal election.

8 Accordingly, the Court has no difficulty finding that the
9 Alabamians who were and/or remain inaccurately inactivated on
10 the voter rolls and who were and/or remain referred for
11 criminal investigation as a part of this untimely program have
12 been harmed by those actions, and that harm will continue to
13 occur absent preliminary injunctive relief.

14 The Court now turns to the balancing of the equities
15 knowing that Congress designed the NVRA to carefully balance
16 the four competing purposes of the statute. The equities favor
17 injunctive relief when the balance Congress struck is upset
18 through noncompliance with the 90-day provision, and as Arcia
19 explains, quote, at most times during the election cycle the
20 benefits of systematic programs outweigh the costs because
21 eligible voters who are incorrectly removed have enough time to
22 rectify any errors. In the final days before an election,
23 however, the calculus changes, end quote. The whole point of
24 the 90-day provision as set forth in Arcia is to be very
25 cautious about programs that may systematically remove and have

1 the purpose of systematically removing voters on the eve of an
2 election.

3 As previously explained, Mr. Helms's own testimony,
4 together with evidence that is not in dispute, establishes that
5 Alabama's untimely program worked real harms to Alabama voters
6 mere weeks before the 2024 general election. It led them to
7 believe that they needed to take action to ensure their ability
8 to cast a ballot in that election, and it led the Secretary to
9 inaccurately refer thousands of Alabamians for criminal
10 investigation by the State's chief law enforcement officer.
11 The Secretary's efforts to reactivate large numbers of voters
12 during the pendency of this lawsuit underscores the Secretary's
13 understanding of this harm.

14 Mr. Helms has submitted three declarations which in total
15 established that the Secretary's office has directed the
16 reactivation of more than 2,000 voters of the 3,251 who were
17 inactivated as part of the program. Mr. Helms testified about
18 one instance in which a voter was inaccurately instructed by a
19 county registrar to complete a self-removal form even though
20 that voter is eligible to vote. That evidence was the
21 declaration of Mr. Clarence Hunter, an active Alabama voter
22 from Russell County, and that declaration was submitted by the
23 plaintiffs. Mr. Helms testified that the registrar did not
24 follow the instructions and that the Secretary's office worked
25 to address that harm.

1 On the other side of the equity scale, based on
2 Mr. Helms's testimony, it appears that through this program,
3 the Secretary has identified a handful, at least four, perhaps
4 as many as ten, perhaps more, noncitizens who were somehow on
5 Alabama's voter rolls. In any event, Alabama will suffer no
6 undue prejudice as a result of a preliminary injunction
7 because, A, the Secretary can -- could and should have acted
8 earlier and, B, the Secretary still has the ability to remove
9 noncitizens from the rolls on the basis of individualized
10 information despite the 90-day provision.

11 Based on the foregoing admissions and findings, the Court
12 rejects the State defendants' argument that for the purposes of
13 evaluating the equities the program has at most caused only a
14 slight inconvenience to inactivated voters that has now been
15 resolved. This was not a no-harm, no-foul instance of
16 noncompliance with the 90-day provisions, and the equities
17 counsel strongly in favor of preliminary injunctive relief.

18 As to the public interest factor, the public interest, the
19 public has a clear interest in the enforcement of federal
20 statutes that protect constitutional rights, especially voting
21 rights, under *United States v. Raines*, which is 362 U.S. 17 at
22 page 27, a 1960 decision of the United States Supreme Court.
23 That public interest is served by enforcing federal statutes
24 that are meant to reduce systematic programs that are
25 disruptive to the last 90 days of a federal election cycle, and

1 this is especially applicable in the facts of this case.

2 The State argues that the public interest is served by
3 removing noncitizens from voter rolls in Alabama, and that's
4 certainly true, but the Court's orders today will in no way
5 limit the State's authority to investigate and prosecute
6 noncitizens who try to vote in elections in Alabama. Under
7 *Arcia* and the Court's orders, the 90-day provision does not,
8 quote, bar a state from investigating potential noncitizens and
9 removing them on the basis of individualized information even
10 within the 90-day window, end quote.

11 So to repeat what the Court said and expressed earlier,
12 Federal law imposes a deadline for programs like this one.
13 Secretary Allen's office blew the deadline for the 2024 general
14 election, and that had real consequences for the thousands of
15 Alabamians who the Secretary now acknowledges are, in fact,
16 legally entitled to vote.

17 The Court finds that a preliminary injunction should
18 issue, will not harm the State's ability to investigate and
19 prosecute noncitizens who try to vote in Alabama. And the
20 Court will not make, at this time, any other findings or
21 conclusions about any other issues in the case.

22 A written order will issue momentarily that will grant, in
23 part, the United States motion for a preliminary injunction,
24 reserve ruling on the motion for preliminary injunction filed
25 by the private plaintiffs, deny, in part, the State defendants'

1 motion to dismiss as to the claim asserted by the United
2 States, and reserve ruling as to the remainder of the motions
3 to dismiss in both cases.

4 Is there anything else we need to take up while we're
5 together?

6 MS. MESSICK: May we be heard on exactly what the
7 injunction will be?

8 THE COURT: Well, I won't limit your opportunity to
9 make a record today, but, I mean, the opportunity to submit
10 proposed orders was open until 6:30 this morning. But if there
11 are arguments you would like to make as to what the injunction
12 should be, I can hear them now.

13 MS. MESSICK: Okay. Thank you, Your Honor. We had
14 some feedback on the proposal that the United States made and
15 some concerns. Do you want to --

16 MR. OVERING: Well, it shouldn't be -- shouldn't be
17 long, and I understand that it may already be written and may
18 issue imminently. But we had concerns primarily about the
19 deadline about three days to comply with all of these things.
20 It takes time not only to figure out the status of the people
21 on the list and provide those updates that are in the Helms'
22 declarations, to communicate with 67 boards of registrars to
23 put together personalized letters and to get those out the
24 door. And, you know, if three days being Saturday, that's a
25 lot different than three business days, which could mean Monday

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

Dated: 10/16/2024

A handwritten signature in black ink, appearing to read "Kelli Griffin", written over a horizontal line.

Kelli M. Griffin, RPR, CSR